

1 Witnesses were sworn and testified; exhibits were admitted and
2 examined; and counsel made arguments. From this the Board comes to
3 these

4 FINDINGS OF FACT

5 I

6 Appellant, Faith Financial Services, Inc., of Salt Lake City,
7 Utah, owns 24.3 acres of property 6 miles south of Davenport,
8 Washington which was formerly a U.S. missile site under control of the
9 Army and its Corps of Engineers. The site is within Section 21,
10 Township 24 North, Range 37 E.W.M. The site has an "improved" 34,000
11 square foot hole suitable for storage of a missile and some man-made
12 mounds. It also has two wells.

13 II

14 Ground Water Certificate 5042A, tied to this subject property,
15 authorizes withdrawal of 50 gallons per minute for up to 27 acre feet
16 per year from two wells for domestic supply purposes in a limited use
17 area. It acknowledges the U.S. Army's priority use date of July 16,
18 1962. The wells are near the Quincy and Odessa Ground Water
19 Management Subareas, but are not located within the bounds of either.

20 III

21 Property ownership was transferred from the U.S. Army to a private
22 party, Milton Reinbold, after the missile programs no longer needed
23 sites in Washington State. The property, scabland with sagebrush,
24 weeds, and basalt outcroppings, subsequently was sold to Faith
25 Financial Services, Inc., in 1979. Apparently appellant intended to

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 develop the property into condominiums, bombshelter, and possibly a
2 commercial fish reservoir and a hydroponic garden. The Department of
3 Ecology was not apprised of plans for development, intentions for use,
4 or actual use of water during or after any of the property sales.

5 IV

6 Field and records examinations reveal the subject wells are not
7 currently equipped for service of any kind. Lincoln Electric Company,
8 the local supplier of electricity, has not provided service to the
9 wells or any other part of the property since 1966. A water master
10 examined the site from behind a fence in 1980 and found no apparent
11 current use of water and no indication of recent use. No evidence or
12 testimony presented in the hearing indicates any beneficial use of
13 water on the property in at least the past five years. This area is
14 not noted for its heavy ground water development and there is no
15 evidence of competition for development of land or water resources at
16 this site.

17 V

18 Appellant's intended uses of water demands more than 50 gallons
19 per minute, 27 acre feet per year, and is for purposes over and above
20 domestic supply. This intended use exceeds the rights appellant has
21 in Certificate No. 5042A.

22 VI

23 The Department of Ecology (DOE) made reasonable and ordinary
24 attempts to advise appellant of the jeopardy in which Ground Water
25 Certificate No. 5042A stood. The Department further provided

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 opportunity for the record to be clarified about actual past and
2 current uses, which may not have been detected through departmental
3 investigations. Appellant did not respond to the Department's
4 inquiries and subsequently appealed DOE's April 10, 1981 Order of
5 Relinquishment. Appellant did not receive the order until May 8, 1981.

6 VII

7 Any Conclusion of Law which should be deemed a Finding of Fact is
8 hereby adopted as such.

9 From these Findings the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over these persons and these matters,
13 RCW 43.21B.

14 II

15 The Department has established by clear and definite evidence that
16 appellant, or its predecessor in interest, has not beneficially used
17 its water right or some portion of it for a period of five or more
18 consecutive years.

19 III

20 Ground Water Certificate No. 5042A did pass into the possession of
21 Faith Financial Services, Inc., who then bears responsibility for
22 demonstrating that (a) beneficial uses of water have occurred;
23 (b) will occur in a determined future development which will activate
24 before July 1, 1982; or (c) did not occur for sufficient cause. RCW
25 90.14.140 and .180.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 Faith Financial Services, Inc., did not present evidence which
2 would show why the State should not cancel the water right
3 [Certificate No. 5042A] for failure to put water to beneficial use
4 under terms of the State Water Code. RCW 90.41.130 and .140.
5 However, nothing prevents appellant from applying for a permit to
6 appropriate water if beneficial water uses now contemplated are to be
7 undertaken. RCW 90.03, 90.14.180, and 90.54.

8 IV

9 Assuming appellant's certificate were still fully valid and
10 usable, the proposed development would require more water than the
11 certificate provides and a change in purpose of use for the already
12 certified quantity. Rights granted within a certificate cannot be
13 expanded beyond the terms of such certificate. The additional water
14 could only be appropriated through a permit, which results from a new
15 application and new priority date.

16 V

17 The State Department of Ecology's Order of Relinquishment
18 DE 81-310 was issued on reasonable grounds and in a timely fashion,
19 and should be affirmed. RCW 90.14.

20 VI

21 Any Finding of Fact which should be deemed a Conclusion of Law is
22 hereby adopted as such.

23 From these Conclusions the Board enters this

24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

ORDER

The Department of Ecology's DE 81-310 Order of Relinquishment of
Ground Water Certificate No. 5042A, is affirmed.

DONE this 25th day of November, 1981.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman


DAVID AKANA, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER